

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID HERBERT,

Plaintiff,
v.
Civil No. 05-10161-BC
Hon. David M. Lawson
Magistrate Judge Charles E. Binder

RESIDENT UNIT OFFICER ROARK,
RESIDENT UNIT OFFICER BURTOVOY,
RESIDENT UNIT MANAGER
INGRAM, ASSISTANT RESIDENT UNIT
SUPERVISER RISELY, ASSISTANT
RESIDENT UNIT SUPERVISER
NIEDERMEYER, J. EATON GRIEVANCE
COORDINATOR, CAPTAIN GOLDBERG,
INSPECTOR BELER, WARDEN
ROMANOWSKI, and RESIDENT UNIT
OFFICER GOLL,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
DISMISSING CASE, AND DENYING PLAINTIFF'S MOTIONS AS MOOT**

This matter is before the Court on the magistrate judge's recommendation that the case be *sua sponte* dismissed without prejudice. The case was referred to United States Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b). The magistrate judge issued his report on August 16, 2005, recommending that this Court dismiss the case for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). The plaintiff filed a document titled "Amended Motion" [dkt # 14], which contained objections to the magistrate judge's report. The objections were stricken for failure to comply with local rules, and the plaintiff failed to re-file objections that conformed with the rules. However, in the objections, the plaintiff acknowledged that he has not exhausted his administrative remedies: "I am in the process of

clarifying all complaints and pursuing further administrative steps II and steps III for response of record."

The plaintiff's failure to properly file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the Magistrate Judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge. In addition, even if the information contained in the objections were to be considered, it does not provide a basis for rejecting the recommendation of the magistrate judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 12] is **ADOPTED**, and the plaintiff's case is **DISMISSED**.

It is further **ORDERED** that the plaintiff's motion to proceed *in forma pauperis* [dkt # 6], motion for immediate transfer [dkt # 9], and motion of continuity [dkt # 11] are **DENIED** as moot.

s/David M. Lawson
 DAVID M. LAWSON
 United States District Judge

Dated: September 20, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 20, 2005.

s/Tracy A. Jacobs
 TRACY A. JACOBS